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Supreme Court of the United States

OCTOBER TERM

1958 **19**

NO. ~~17~~ **18**

JOHN L. LEWIS, CHARLES A. OWEN
and JOSEPHINE ROCHE, as Trustees of
the United Mine Workers of America
Welfare and Retirement Fund

PETITIONERS

V.

BRIEF OF RESPONDENT IN
OPPOSITION TO THE GRANTING
OF A WRIT OF CERTIORARI

BENEDICT COAL CORPORATION

RESPONDENT

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IN THE
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No. 562

JOHN L. LEWIS, CHARLES A. OWEN
and JOSEPHINE ROCHE, as Trustees of
the United Mine Workers of America
Welfare and Retirement Fund PETITIONERS

V. BRIEF OF RESPONDENT IN
OPPOSITION TO THE GRANTING
OF A WRIT OF CERTIORARI

BENEDICT COAL CORPORATION RESPONDENT

TO THE HONORABLE, THE CHIEF JUSTICE AND
THE ASSOCIATE JUSTICES OF THE SUPREME
COURT OF THE UNITED STATES:

Your respondent respectfully submits that a writ of certiorari should not issue to review the judgment of the United States Court of Appeals for the Sixth Circuit on the grounds assigned by the petitioners.

QUESTION PRESENTED

Your respondent does not accept the statement of the question presented by the petitioners and states the following as a counter-statement of the question involved:

Can the Benedict Coal Corporation use the same defense against the Trustees of the Welfare Fund that it could use against the defendant Unions, when an action is brought against Benedict by the Trustees to recover money

allegedly due and owing the trust fund, when the trust fund is created by an integrated contract instrument whose respective provisions are interdependent and when Benedict among other things, agrees to pay certain money into the fund in return for the agreement of the defendant Unions to use certain contractual provisions for the adjustment of disputes and (for a part of the period involved) for their further promise to exercise their best efforts through available disciplinary measures to prevent stoppages of work by strike or lockout pending adjustment or adjudication of disputes and grievances, when an alleged breach of these agreements by the defendant Unions impair the ability of Benedict to pay into the fund.

STATEMENT OF THE CASE

Your respondent would supplement and correct the Statement of the Case as set out by the petitioners in these regards:

The 1950 and the 1952 agreements had the following provisions:

"INTEGRATED INSTRUMENT"

"This Agreement is an integrated instrument and its respective provisions are interdependent and shall be effective from and after March 5, 1950" (R. 107a)

The 1950 contract also had provisions for the settlement of local and district disputes. It further provided:

"3. The contracting parties agree that, as a part of the consideration of this contract, any and all disputes, stoppages, suspensions of work and any and all claims, demands or actions growing therefrom or involved therein shall be by the contracting parties settled and determined exclusively by the machinery provided in the 'Settlement of Local and District Disputes' section of this Agreement; or, if national in character, by the full use of free collective bargaining as heretofore

"R" refers to the printed record

known and practiced in the industry.

4. The United Mine Workers of America and the Operators signatory hereto affirm their intention to maintain the integrity of this contract and to exercise their best efforts through available disciplinary measures to prevent stoppages of work by strike or lockout pending adjustment or adjudication of disputes and grievances in the manner provided in this agreement." (R. 106a)

The 1952 agreement eliminated Clause 4 above and amended subsection 3 to read as follows:

"3. The United Mine Workers of America and the operators agree and affirm that they will maintain the integrity of this contract and that all disputes and claims which are not settled by agreement shall be settled by the machinery provided in the 'Settlement of Local and District Disputes' section of this Agreement unless national in character in which event the parties shall settle such disputes by free collective bargaining as heretofore practiced in the industry, it being the purpose of this provision to provide for the settlement of all such disputes and claims through the machinery in this contract provided and by collective bargaining without recourse to the courts." (R. 113a).

In its answer filed to the original action brought by the trustees, Benedict denied liability for the sum sought on several grounds which we consider material to the question presented to this court. The pertinent part of Benedict's answer to the original complaint was as follows:

"It is true that the Defendant has not paid to the Plaintiff the alleged royalty for all of the tons of coal produced, but Defendant states that during the last five years it has been operating under a contract with the United Mine Workers of America and that the United Mine Workers of America has repeatedly broken this contract to Defendant's damage. The United Mine Workers of America has

had numerous unlawful strikes, has refused to arbitrate differences, and this refusal has caused a number of unlawful strikes and these Defendants have been unable to pay the alleged royalties because of the damages suffered by reason of the breach of the contracts by the United Mine Workers of America. That the details of said breaches will be set out in supplemental pleadings and in a cross-claim or counterclaim to be filed in this cause. That during the period of Defendant's operation under contracts with the United Mine Workers of America, the said United Mine Workers of America has caused strikes to be held at Defendant's mines which amounted to secondary boycotts as prohibited by the Labor Management Relations Acts and which strikes further damaged Defendants and made them unable to pay the welfare royalty to the Defendant by the said secondary boycotts, details of which will be hereinafter set out. That the Plaintiff in this action being the beneficiary of a contract entered into between the Defendant and United Mine Workers of America is bound by all the defenses that this defendant may assert against the United Mine Workers of America by its breaches of contract and by its secondary boycotts has damaged Defendant and made Defendant unable to pay its welfare payments, the Plaintiff in this action is not entitled to recover anything. Furthermore, the United Mine Workers of America is indebted to the Defendant in an amount in excess of any sum that this Defendant may be indebted to the Plaintiff." (R, 18a, 19a).

It was the position of Benedict that the obligation by Benedict to make payments to the trustees was dependent upon performance by the United Mine Workers and District 28 of their obligations to Benedict and that the trustees, being third party beneficiaries of the agreement, were subject to the defenses arising from the conduct of the United Mine Workers of America and District 28.

ARGUMENT

We will follow the same order of argument as contained in the petition for certiorari.

1. C

The petitioners argue that the thrust of the court's reasoning and judgment is to jeopardize the stability of all trusts resultant from collective bargaining, and consequently to be deprivative of welfare and pension benefits relied upon by employee beneficiaries of such trusts. We understand the court's reasoning and judgment to be based upon basic principals of contract and we insist that to require the contracting parties to be bound by basic contractual principals is not to jeopardize the stability of any such trusts. The large number of persons covered by welfare and retirement pension benefits is no reason to depart from fundamental principals of contract.

In Paragraph I of their argument, the petitioners argue that the court made a fundamental error in considering the trustees in this action as third party beneficiaries to the agreements. The Sixth Circuit was fundamentally sound in this finding. The trust fund involved was created by the contract between Benedict and the Union. The provisions of this contract are interdependent. It is fundamental that Benedict's obligation to pay royalties into the fund is dependent upon the performance of the obligations incurred by the other contracting parties, the International Union and District 28.

The petitioners then argue that the unpaid royalties are trust property and that such trust property in the hands of Benedict became impressed with such trust upon the production of coal from which the obligation is computed. However, in this premise they ignore the fact that no obligation rests on Benedict to pay into the fund unless the Union has fulfilled its contractual duties.

Petitioners cite *Lewis v. Quality Coal Corp.*, 243 F. 2d 769. However, in that case the court expressly stated that the title of plaintiff's and their right to recover the money is not controverted. That is not the situation in the instant case.

The petitioners further argue that the court of Appeals

conclusions that Benedict's "obligation to the trustees was dependent upon performance by the Unions of their obligations" and therefore the Trustees were third party beneficiaries, "subject to the defenses arising from breaches by the Unions" are evisceratory of the trust agreed to by the agreements employer-settlers, including Benedict.

In this argument, as in other arguments, petitioners consistently ignore the plain wording of the contract that "this agreement is an integrated agreement and its respective provisions are interdependent." (R. 107a).

Respondent's position is simply that the contract means what it says when the provisions were made interdependent.

Continuing to ignore this portion of the contract, petitioners then argue that Benedict's obligation to deliver to the trustees the trust property is a transaction wholly separate from situations upon which Benedict's claims against United Mine Workers and District 28 are predicated. We again insist that the contract merely means what it says when it states that the provisions are interdependent. Benedict's obligation to pay royalties to the trustees is not wholly separate from the obligations of the other contracting parties to abide by the contract.

The fundamental law of contract and trust sustains the ruling of the Sixth Circuit.

THE PERTINENT LAW

THE PRINCIPLES OF CONTRACT APPLY TO THIS CASE.

The Fund is created by contract. The promises are interdependent. No obligation rests on Benedict to pay into the Fund unless the Union has fulfilled its contractual duties. No money was or is due and owing the Fund by Benedict if the Union damaged Benedict to a greater extent by the Union's breach of the contract. We cannot get away from the principles of contract in this case.

In Restatement of the Law of Trusts 1935 Edition, Volume 1, page 63:

"No consideration is required for the creation of a trust (see S 28, 29). If, however, the settlor does not manifest an intention to create a present trust, but only manifests an intention to create a trust in the future, no trust is currently created, and he is not bound later to create the trust, unless the requirements for the formation of a contract are complied with (see S 30). The result is the same where, although the settlor uses language of present conveyance, he is not yet owner of the property which he purports to convey. The creation of a trust is a present disposition of property, and not an undertaking to make a disposition in the future."

And further in Comment a. to Section 75, Restatement of Trusts on page 225:

a. "Interest which has not come into existence. An interest may be not in existence because the thing which would be the subject matter of the interest is not in existence, or because although the thing is in existence no one has an interest in it. In such cases no one has an interest in the thing of which he can declare himself trustee or which he can transfer to another in trust. A person can, it is true, make a contract binding himself to create a trust of an interest if he should thereafter acquire it; but such an agreement is not binding as a contract unless the requirements of the law of Contracts are complied with (see Comment b)."

The appellants argue that unpaid royalties represent trust property in the hands of Benedict and that such property became impressed with the trust upon the production of coal from which the obligation is computed. In making this statement appellants assume that the royalties are due and owing. This is an erroneous assumption.

"S" denotes section

tion since the jury found that the other contracting party, the Union, breached the contract and by its breach damaged Benedict to a greater extent than the unpaid royalties. The obligations of the contract being interdependent there were and are no unpaid royalties due or owing and naturally no trust is impressed.

Furthermore, the operating statements kept by Benedict show that on many occasions, because of the breaches of contract by the Union, there was no money left over after paying the costs of production of each ton of coal. A trust cannot be impressed on nonexistent money.

In the case at bar there was no transfer to the Trustees of the alleged money owed. There was no money due and owing since such an obligation was dependent upon the performance by the Union of its obligations. Furthermore, the so-called royalties in the hands of Benedict were not in being because of the losses Benedict suffered by reason of the Union's unlawful breach of contract.

THE DEFENSES AGAINST THE CONTRACTING PARTY ARE AVAILABLE AGAINST THE TRUSTEES

In 13 Corpus Juris, 699:

(S 799) *5. Contract for Benedict of Third Person. One who seeks to take advantage of a contract made for his benefit by another must take it subject to all legal defenses and inherent equities arising out of the contract, such as the fraud of the party procuring it, the nonperformance of conditions, or the right to a setoff, unless the element of estoppel has entered.

In Williston on Contracts, Volume Two, Sec. 395:

"A more difficult case arises where the defense does not relate to the origin of the contract, but is based on supervening circumstances, such as non-performance by the promisee of a counter-promise made by him, increase of risk in insurance, or discharge by the promisee by release or rescission. The defense of non-performance should be available against the third

person whether he is a donee beneficiary or a creditor beneficiary. Such a defense is properly based on failure of consideration. As the substantial matter the parties had in mind was the performance of the promise the defendant promisor has in substance not received what he bargained for. Under these circumstances it is unjust to allow a mere donee to enforce the promise; and if the third person is a creditor he is not entitled to any greater right than his debtor had." (pp. 1137-1138)

In 12 American Jurisprudence 842:

"Even in jurisdictions which recognize the right of a beneficiary to enforce the contract, the agreement between the promisor and promisee must possess the necessary elements to make it a binding obligation — in other words, it must be a valid agreement between the parties to enable a third person, for whose benefit the promise is made, to sue upon it. His rights depend upon, and are measured by the terms of the contract. The right of a third person for whose benefit a promise is made is affected with all the infirmities of the contract as between the parties to the agreement. Unless the third person has been induced to alter his position by relying in good faith upon the contract made for his benefit or unless a novation has been effected, the promisor may set up any defense or equity against him which he could have set up as against the promisee. Thus, in an action by the beneficiary, fraud on the part of the promisee, mistake, and want of consideration may be asserted by the promisor."

THE BREACHES OF CONTRACT BY THE UNION ARE ADEQUATE DEFENSES IN THIS ACTION BY THE TRUSTEES

The breaches of the contract by the Union discharged the obligations to pay royalties on the part of Benedict. In 13 Corpus Juris 627:

"Dependent Covenants or Promises. Where promises

which form the consideration for each other are concurrent or dependent, the failure of one party to perform will discharge the other, and one cannot maintain an action against the other without showing performance, or a tender of performance, on his part, unless such performance has been excused, the general rule being that a person who has himself broken a contract cannot recover on it."

In 42 American Jurisprudence 852:

"Where the acts or covenants of the parties are concurrent and are to be done or performed at the same time, the covenants are dependent and neither party can maintain an action against the other without performance on his part."

In Restatement of Contracts 1932 Edition Section 274:

"Failure of Consideration as a Discharge of Duty.

(1) In promises for an agreed exchange, any material failure of performance by one party not justified by the conduct of the other discharges the latter's duty to give the agreed exchange even though his promise is not in terms conditional. An immaterial failure does not operate as such a discharge.

(2) The rule of Subsection (1) is applicable though the failure of performance is not a violation of legal duty."

It is immaterial that Benedict attempted to continue working under the contract. In 13 Corpus Juris 699:

"It is not necessary that defendant shall have rescinded his contract in order to prevent his assertion of non-performance by plaintiff as a defense to an action thereon, or to enable him to plead a failure of consideration."

It is true that Benedict attempted to continue operating under the contract. They were damaged by the breaches of contract by the Union, and this affected their ability to pay into the Fund. It is, therefore, equitable and just to

permit the amount that they were damaged by the breach of contract to be offset against what Benedict should be required to pay into the Fund.

The right of setoff is available in this case. In 47 American Jurisprudence 722:

"In Federal Courts.—The right of setoff generally, defenses arising from counterclaims, and even any equitable defense growing out of the same transaction are freely open to defendants sued at law in Circuit Courts of the United States. The rule as to setoff, in questions arising exclusively under the laws of the United States, cannot be influenced by any local laws or usage. In Federal Courts a defendant in his answer or the plaintiff in his reply may set forth a counterclaim or counterclaims and join, either as independent or as alternate claims, as many claims, either legal or equitable, or both, as he may have against the opposite party. The Rules of Civil Procedure, even though prescribing from a procedural standpoint 'one form of action,' have not changed the substantive character of legal and equitable issues. A defense in the nature of set off or recoupment, unless insolvency is an element, is adjudged a legal defense."

II.

The petitioner then attempts to argue in a round about way that the court's method of giving effect to the offset violates Section 301(b) of the Labor Management Relations Act in that the judgment would not be enforceable only against the organization as an entity and against its assets. We do not follow this argument. The judgment awarded Benedict against the United Mine Workers of America will be paid from the organization or from its assets. The fact that this judgment money, after it is paid into the court, may then be used to discharge Benedict's obligation to the trustees does not violate the dictates of Section 301(b).

Petitioners appear to argue that if the Union were unable

to discharge their judgment, then this would be a payment of the money judgment against the United Mine Workers by withholding the trust property due the trustees. Petitioners again ignore the fact that the trustees' claim against Benedict is subject to any defenses which Benedict has against the United Mine Workers, including set-off and any money allegedly withheld from the trustees is not trust property until it is determined that this royalty money is due and owing. In the instant case, this determination cannot be made until the amount of set-off is determined.

Petitioners are basing part of their argument on the supposition that the judgment debtors are unable to discharge the money judgment. In this case that would mean the United Mine Workers. To our knowledge the petitioners are imagining legal difficulties which are not present in this suit because there has been no intimation that the United Mine Workers are unable to pay this judgment.

CONCLUSION

It may be true that welfare funds represent a social device to be encouraged but this encouragement should never be the ignoring of fundamental principles of contract which two courts have adhered to in reaching the present sound decision. The present decision has not whittled away any protection given such trusts by the 1947 Labor Management Relations Act. Your respondents, therefore, insist that for reasons discussed, a writ of certiorari should not issue for the grounds assigned in the petition.

Respectfully submitted,

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